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May 14, 2020

Dr. Karen B. Salmon  
State Superintendent of Schools  
Maryland State Department of Education  
200 West Baltimore Street  
Baltimore, Maryland 21201

Dear Dr. Salmon:

On behalf of the Maryland Association of Boards of Education (MABE), which represents all of Maryland's 24 local boards, thank you for your leadership and engagement as Maryland's school systems develop and implement responses to the COVID-19 coronavirus pandemic.

At this time, MABE is requesting your assistance in resolving our serious concerns raised by the nonregulatory guidance issued by the U.S. Department of Education outlining its interpretation of the requirements regarding equitable services for students in nonpublic schools under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (Mar. 27, 2020). This guidance was released on April 30, 2020 under the direction of U.S. Education Secretary Betsy DeVos, entitled "Providing Equitable Services to Students and Teachers in Non-Public Schools under the Cares Act Programs (April 30, 2020)."

MABE firmly believes this federal guidance neither accurately nor appropriately reflects the governing statute. Significantly, the recent interpretation would require an inequitable allocation of funding to nonpublic schools, and thereby reduce the amount of funding available to for school systems to provide equitable services to public school students. In this light, MABE is requesting an affirmative statement from MSDE that Maryland will not use the equitable services methodology contained in the federal guidance and, at the same time, advocate for the prompt revision of the federal guidance to provide much-needed clarity both for public and nonpublic schools in Maryland.

To be clear, MABE supports the provision of equitable services for nonpublic schools and students in accordance with the CARES Act, which stipulates that all funds be distributed in accordance with Title I criteria. Title I dictates that funding for equitable services must be distributed by local school systems to nonpublic schools in proportion to the numbers of economically disadvantaged students enrolled at the nonpublic schools in their jurisdiction. Specifically Title I and the CARES Act ensure equity, while the federal guidance does not. Instead, this guidance promotes the use of total enrollment rather than proportionate enrollment of low-income students for calculating funding allocations to nonpublic schools. Again, this methodology is neither equitable nor in compliance with the controlling federal statute.

Therefore, MABE is requesting your support and advocacy for immediate action by the U.S. Department of Education to rescind and revise the guidance issued on April 30, 2020. In addition, in light of the May 22, 2020 deadline for local school systems to apply for CARES Act funding through MSDE, MABE is requesting that you issue a statement to reinforce the fact that the federal nonregulatory guidance has no force and effect on state education agencies or local school systems, and therefore will not be implemented by MSDE. This communication would be greatly appreciated

to provide clear and unambiguous support for the statutory interpretations of local school systems in crafting CARES Act funding applications and consulting in good faith with our nonpublic schools.

Fortunately, the guidance itself is quite clear as to the limitations on the enforceability of nonregulatory guidance generally, and this guidance, in particular. However, in our view, the guidance not only fails to provide clarity, but also generates confusion regarding an otherwise unambiguous statute. The guidance includes the following statement:

“Other than statutory and regulatory requirements included in the document, such as those pursuant to the authorizing statute and other applicable laws and regulations, the contents of the guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. In addition, it does not create or confer any rights for or on any person.”

MABE notes that the Indiana Department of Education recently announced its decision to ignore the Department’s guidance, as contravening federal law, and to use the proportionate funding calculations required by Title I. MABE requests that MSDE take the same action.

Also, MABE continues to advocate that the federal guidance be rescinded and revised, and has requested that U.S. Senators Ben Cardin and Chris Van Hollen and other members of our congressional delegation join us in urging the U.S. Department of Education to do so.

MABE looks forward to your support for the actions requested above to ensure the ability of Maryland’s 24 local school systems to equitably and adequately meet the educational needs of our nearly 1 million public school students and the low-income nonpublic students intended to benefit from equitable services under the CARES Act.

Please do not hesitate to call on MABE for future engagement on public education issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martha James-Hassan".

Martha James-Hassan  
MABE President

Cc:

Local Board of Education Presidents/Chairs  
Local Superintendents/CEOs  
Brig. Gen. Warner Sumpter (Ret.), President, State Board of Education  
The Honorable Adrienne Jones, House Speaker  
The Honorable Bill Ferguson, Senate President  
Frances Hughes Glendening, Executive Director, MABE  
Mary Pat Fannon, Executive Director, PSSAM